

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE SHELBY INSURANCE COMPANY	:	CIVIL ACTION
	:	
v.	:	
	:	
LESLEY D. FEASTER, ANTHONY	:	(Consolidated Under)
FEASTER and WELLS FARGO HOME	:	
MORTGAGE, INC.	:	NO. 03-3600

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LESLEY FEASTER	:	CIVIL ACTION
	:	
v.	:	
	:	
THE SHELBY INSURANCE COMPANY	:	NO. 03-3805

MEMORANDUM AND ORDER

Fullam, Sr. J. April , 2004

The residence owned and occupied by Lesley Feaster and her husband Anthony Feaster suffered severe damage in a fire in August 2002. The house was insured by Shelby Insurance Company. Wells Fargo Home Mortgage, Inc. held a mortgage on the property, and was insured under the policy in its capacity as mortgagee. The Feasters seek recovery for their losses from Shelby Insurance Company. Shelby seeks a declaratory judgment of non-liability. Wells Fargo seeks to recover under the policy for the losses it sustained as mortgagee. All of the corporate parties have filed motions for summary judgment.

The evidence of record discloses substantial disputes of material fact, precluding summary disposition. Shelby contends that the fire was of incendiary origin, and that the

Feasters caused the fire. As to that issue, Shelby has the burden of proof. There is undoubtedly evidence in the record which would warrant a factfinder in concluding that Shelby has established its arson defense, but there is also evidence to the contrary. The Feasters flatly deny having any involvement in causing the fire; their testimony alone demonstrates the existence of a factual dispute which cannot be resolved on a motion for summary judgment, since credibility is crucial.

Shelby also seeks to avoid liability on the theory that the Feasters are precluded from recovering under the policy because they submitted false information and sought to mislead Shelby concerning their financial situation at the time of the fire - information which, obviously, is relevant to the question of whether they had a motive for setting fire to their house. The summary judgment motion includes only excerpts from the Feasters' depositions and examination under oath, so it is difficult to determine whether, in its totality, their testimony was knowingly and intentionally false, or whether the financial picture presented by their testimony was actually significantly different from what Shelby contends was their true situation. In short, I believe that here, too, factual issues remain for trial disposition. Shelby's motion for summary judgment will therefore be denied.

Wells Fargo's motion for summary judgment is predicated upon the protection afforded it as mortgagee, under the terms of the policy. There is no dispute about the fact that, regardless of whether Shelby has policy defenses against the Feasters, Wells Fargo is entitled to recover under the terms of the policy, if it has provable losses. On the present record, it is impossible to determine just what the amount of Wells Fargo's claim may prove to be. It appears that, since the fire, the Feasters have been unable to make mortgage payments, and a foreclosure proceeding is pending. Under the terms of the policy, if Wells Fargo is made whole as a result of the foreclosure of the mortgage, there would be no further liability on the part of Shelby. In any event, the actual amount of Wells Fargo's claim remains to be determined, as well as the possible subrogation rights of these parties with respect to the Feasters, if the arson defense is established. For these reasons, Wells Fargo's motion for summary judgment will be denied.

These consolidated cases were scheduled for non-jury trial on April 12, 2004. But, on the eve of trial, plaintiffs' counsel, Joseph Zenstein, Esquire, filed a motion for leave to withdraw as counsel for the plaintiffs, citing irreconcilable differences concerning the conduct of the litigation. Plaintiff Lesley Feaster has filed a lengthy response, castigating her counsel for various alleged inadequacies and improprieties. This

response, a copy of which was sent to the Disciplinary Board of the Supreme Court of Pennsylvania, demonstrates that the attorney-client relationship has foundered irretrievably. Mr. Zenstein will therefore be permitted to withdraw. Plaintiffs will be afforded a reasonable period of time in which to engage new counsel. Because of these developments, the scheduled trial has been continued.

An order in conformity with the above discussion will therefore be entered.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE SHELBY INSURANCE COMPANY	:	CIVIL ACTION
	:	
v.	:	
	:	(Lead Case)
LESLEY D. FEASTER, ANTHONY	:	
FEASTER and WELLS FARGO HOME	:	
MORTGAGE, INC.	:	NO. 03-3600

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LESLEY FEASTER	:	CIVIL ACTION
	:	
v.	:	
	:	
THE SHELBY INSURANCE COMPANY	:	NO. 03-3805

ORDER

AND NOW, this            day of April 2004, IT IS ORDERED:

1. The motion of Shelby Insurance Company for summary judgment is DENIED.
2. The motion of Wells Fargo Home Mortgage, Inc. for summary judgment is DENIED.
3. The plaintiffs' uncontested motion for continuance of the trial is GRANTED.
4. The motion of Joseph Zenstein, Esquire, for leave to withdraw as counsel for the plaintiffs is GRANTED. Plaintiffs are afforded a further period of 60 days within which to obtain new counsel. Unless, within that time, new counsel enters an appearance on behalf of plaintiffs, plaintiffs will be required to represent themselves at trial.

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John P. Fullam, Sr. J.